

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Samuel Love,

Plaintiff,

v.

**Juan Manuel Mendoza;
Roxana A. Mendoza;
Gloria Perdomo;** and Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For** Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act;
California Disabled Persons Act;
Negligence

Plaintiff Samuel Love complains of Defendants Juan Manuel Mendoza;
Roxana A. Mendoza; Gloria Perdomo; and Does 1-10 ("Defendants") and
alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is substantially limited in his ability to walk. He is a paraplegic who uses a wheelchair for mobility.

2. Defendants are, or were at the time of the incidents, the real property owners, business operators, lessors and/or lessees for the Abuela's Kitchen

1 (“Restaurant”) located at or about 1503 W. Lakeshore Drive, Lake Elsinore,
2 California.

3 3. Plaintiff does not know the true names of Defendants, their business
4 capacities, their ownership connection to the property and business, or their
5 relative responsibilities in causing the access violations herein complained of,
6 and alleges a joint venture and common enterprise by all such Defendants.
7 Plaintiff is informed and believes that each of the Defendants herein,
8 including Does 1 through 10, inclusive, is responsible in some capacity for
9 the events herein alleged, or is a necessary party for obtaining appropriate
10 relief. Plaintiff will seek leave to amend when the true names, capacities,
11 connections, and responsibilities of the Defendants and Does 1 through 10,
12 inclusive, are ascertained.

13
14 **JURISDICTION & VENUE:**

15 4. This Court has subject matter jurisdiction over this action pursuant to
16 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
17 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 5. Pursuant to pendant jurisdiction, an attendant and related cause of
19 action, arising from the same nucleus of operative facts and arising out of the
20 same transactions, is also brought under California’s Unruh Civil Rights Act,
21 and the California Disabled Persons Act, which acts expressly incorporate the
22 Americans with Disabilities Act.

23 6. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
24 founded on the fact that the real property which is the subject of this action is
25 located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

7. The Plaintiff went to the Restaurant in February of 2015 to eat.

8. The Restaurant is a facility open to the public, a place of public accommodation, and a business establishment.

9. Parking spaces are one of the facilities, privileges and advantages offered by defendants to their customers at the Restaurant.

10. Unfortunately, although parking spaces are one of the facilities available to patrons of the Restaurant, there were no van-accessible parking spaces available for persons with disabilities. Instead, there is one parking space reserved for persons with disabilities that has a parking space measuring 116 inches accompanied by an access aisle that was just 84 inches in width. The parking space is not accessible for van drivers.

11. Moreover, the access aisle does not have a "No Parking" warning in the access aisle, which means that other customers can use the access aisle with impunity.

12. Plaintiff alleges that there used to be an accessible van parking space in the lot for persons with disabilities. Unfortunately, the parking space has been allowed to get paved over. Because of defendants' lack of maintenance and care, the accessible parking space designed for use by persons with disabilities is no longer available.

13. Defendants have no policy or procedure in place to make sure that the van-accessible parking spaces remain useable in the parking lot. As such, the parking space reserved for persons with disabilities is no longer suitable for use by plaintiff.

14. The plaintiff personally encountered this problem. This inaccessible condition denied the plaintiff full and equal access and caused him difficulty and frustration.

15. Plaintiff would like to return and patronize the Restaurant but will be

1 deterred from visiting until the defendants cure the violation. Plaintiff lives in
2 Riverside County and shops and travels within the County on a regular basis.
3 He would like to return to the Restaurant.

4 16. The defendants have failed to maintain in working and useable
5 conditions those features required to provide ready access to persons with
6 disabilities.

7 17. Given the obvious and blatant violations, the plaintiff alleges, on
8 information and belief, that there are other violations and barriers on the site
9 that relate to his disability. Plaintiff will amend the complaint, to provide
10 proper notice regarding the scope of this lawsuit, once he conducts a site
11 inspection. However, please be on notice that the plaintiff seeks to have all
12 barriers related to his disability remedied. See *Doran v. 7-11*, 506 F.3d 1191
13 (9th Cir. 2007) (holding that once a plaintiff encounters one barrier at a site,
14 he can sue to have all barriers that relate to his disability removed regardless
15 of whether he personally encountered them).

16 18. Additionally, on information and belief, the plaintiff alleges that the
17 failure to remove these barriers was intentional because: (1) these particular
18 barriers are intuitive and obvious; (2) the defendants exercised control and
19 dominion over the conditions at this location and, therefore, the lack of
20 accessible facilities was not an "accident" because had the defendants
21 intended any other configuration, they had the means and ability to make the
22 change.

23
24 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
25 **WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
26 defendants (42 U.S.C. section 12101, et seq.)

27 19. Plaintiff repleads and incorporates by reference, as if fully set forth
28 again herein, the allegations contained in all prior paragraphs of this

1 complaint.

2 20. Under the ADA, it is an act of discrimination to fail to ensure that the
3 privileges, advantages, accommodations, facilities, goods and services of any
4 place of public accommodation is offered on a full and equal basis by anyone
5 who owns, leases, or operates a place of public accommodation. See 42
6 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 7 a. A failure to make reasonable modifications in policies, practices,
8 or procedures, when such modifications are necessary to afford
9 goods, services, facilities, privileges, advantages, or
10 accommodations to individuals with disabilities, unless the
11 accommodation would work a fundamental alteration of those
12 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 13 b. A failure to remove architectural barriers where such removal is
14 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
15 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
16 Appendix “D.”
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to
21 the maximum extent feasible, the path of travel to the altered
22 area and the bathrooms, telephones, and drinking fountains
23 serving the altered area, are readily accessible to and usable by
24 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

25 21. Any business that provides parking spaces must provide handicap
26 parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. One in
27 every eight of those handicap parking spaces but not less than one must be a
28 “van” accessible parking space, *i.e.*, having an eight foot access aisle. 1991

Standards § 4.1.2(5)(b). Under the 2010 Standards, one in every six accessible parking spaces must be van accessible. 2010 Standards § 208.2.4.

22. Here, the lack of a compliant, van-accessible parking space is a violation of the law.

23. Any business that provides parking spaces must provide accessible parking spaces. 1991 Standards § 4.1.2(5); 2010 Standards § 208. To qualify as a reserved handicap parking space, the space must be properly marked and designated. Under the ADA, the method and color of marking are to be addressed by State or local laws or regulations. See 36 C.F.R., Part 1191, § 502.3.3. Under the California Building Code, to properly and effectively reserve a parking space for persons with disabilities, each such space must be identified with a reflectorized sign permanently posted adjacent to and visible from each stall or space. CBC § 1129B.4. The sign must consist of the International Symbol of Accessibility (♿) in white on a blue background. *Id.* It cannot be smaller than 70 square inches and must be mounted so that there is a minimum of 80 inches from the bottom of the sign to the parking space. *Id.* Signs must be posted so that they cannot be obscured by a vehicle parking in the space. *Id.* An additional sign or additional language below the symbol of accessibility must state, “Minimum Fine \$250” to ensure that the space remains available for persons with disabilities. *Id.* Another sign must be posted in a conspicuous place at the entrance to the parking lot or immediately adjacent to each handicap parking space, with lettering 1 inch in height, that clearly and conspicuously warn that unauthorized vehicles parking in the handicap parking spaces can be towed at the owner’s expense. *Id.* Additionally, the surface of the handicap parking stall must have a profile view of a wheelchair occupant (♿) that is 36 inches by 36 inches. *Id.* And the surface of the access aisle must have a blue border. CBC § 1129B.3. The words “NO PARKING” in letters at least a foot high must be painted on the

1 access aisle. *Id.* Here, there was no “NO PARKING” lettering and the parking
2 simply failed to comply.

3 24. A public accommodation must maintain in operable working condition
4 those features of its facilities and equipment that are required to be readily
5 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

6 25. Here, the failure to ensure that the accessible facilities were available
7 and ready to be used by the plaintiff is a violation of the law.

8 26. Given its location and options, the Restaurant is a business that the
9 plaintiff will continue to desire to patronize but he has been and will continue
10 to be discriminated against due to the lack of accessible facilities and,
11 therefore, seeks injunctive relief to remove the barriers.

12
13 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
14 **RIGHTS ACT** (On behalf of plaintiffs and against all defendants) (Cal Civ §
15 51-53)

16 27. Plaintiff repleads and incorporates by reference, as if fully set forth
17 again herein, the allegations contained in all prior paragraphs of this
18 complaint.

19 28. Because the defendants violated the plaintiffs’ rights under the ADA,
20 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
21 Code § 51(f), 52(a).)

22 29. Because the violation of the Unruh Civil Rights Act resulted in
23 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
24 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
25 55.56(a)-(c).)

1 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
2 **DISABLED PERSONS ACT** (On behalf of plaintiffs and against all
3 defendants) (Cal Civ. § 54-54.8)

4 30. Plaintiff repleads and incorporates by reference, as if fully set forth
5 again herein, the allegations contained in all prior paragraphs of this
6 complaint.

7 31. Because the defendants violated the plaintiff's rights under the ADA,
8 they also violated the Disabled Persons Act and are liable for damages. (Civ.
9 Code § 54.1(d), 54.3(a).)

10 32. Because the violation of the Disabled Persons Act resulted in difficulty,
11 discomfort or embarrassment for the plaintiffs, the defendants are also each
12 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
13 (c).)

14
15 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE** (On behalf of plaintiff
16 and against all defendants)

17 33. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint.

20 34. The Defendants had a general duty and a duty arising under the
21 Americans with Disabilities Act and the Unruh Civil Rights Act and
22 California Disabled Persons Act to provide safe, convenient, and accessible
23 facilities to the plaintiffs. Their breach of this duty, as alleged in the preceding
24 paragraphs, has caused injury and damage as alleged above.

